IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20041 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANJAR TALUKA PANCHAYAT - Petitioner(s)

Versus

GOSAI BHARATGAR PARSHOTTAMGAR - Respondent(s)

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Appearance :

MR PREMAL R JOSHI for Petitioner(s) : 1,
MRS ARTI H NANAVATI for Respondent(s) : 1,
MR HJ NANAVATI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 14/10/2005

ORAL JUDGMENT

1. Rule. Learned advocate Mr.Nanavati wavies service of notice on behalf of the respondent. At the joint

request of learned advocates appearing for the parties, petition is taken up for final disposal today.

2. In the present petition, the petitioner employer has challenged the legality of an award dated 28th July, 2005. By the impugned award, the reference of the respondent workman was allowed. His termination was set aside. He was directed to be reinstated in service with full back wages and continuity.

3. The respondent was engaged as a driver by the petitioner. He was appointed by an order dated 1/10/1987. In the appointment order it was stated that the permanent driver of the petitioner has been transferred and vacancy has, therefore, arisen. New recruitment has not come. On account of scarcity situation it was necessary to engage a driver to drive the vehicle bearing number GJX 54. Accordingly, respondent was appointed as a driver on following conditions.

(i)that he is appointed on purely ad hoc basis w.e.f 14/9/1987 and such appointment shall continue till regular selected driver is available. Appointment

is purely on daily basis ad hoc appointment.

(ii)He will receive fixed remuneration of Rs. 25/- per day.

(iii)Before resuming duty he will have to give a certificate that he is not facing criminal cases of moral turpitude.

(iv)Upon appointment of regular driver his services will be automatically terminated.

3.1 Apprehending his termination, the respondent approached the Labour Court, Anjar and obtained interim protection. He was, therefore, continued under the protection of the Court's order. The petitioner filed appeal against the interim order and the Extra Assistant Judge, Bhuj vacated the stay by an order dated 24th August, 1994. Termination of the respondent was, therefore, brought into effect by communication dated 14/10/1994. The respondent, therefore, approached the Labour Court, Kutch and challenged his termination. By the impugned award Labour Court allowed the reference. While allowing the reference the Labour Court observed that the respondent was alloted a quarter on 5/7/1994. The petitioner failed to establish that respondent was engaged towards scarcity work. Because of the failure on

the part of the petitioner to establish that he was engaged towards the scarcity work and that a regular driver was appointed, termination of the respondent was declared as illegal.

4. Decision of the Labour Court cannot be sustained. Firstly, the appointment order of the respondent itself makes it abundantly clear that he was engaged on account of availability of vacancy due to transfer of a regular incumbent. On account of scarcity situation, it was necessary for the respondent to drive the vehicle of the department. He was, therefore, appointed with a clear stipulation that his services will be terminated on appointment of a regular driver. Till then he was engaged purely on ad hoc basis as a daily wager. Secondly, before the Labour Court also, the petitioner had in the written statement clearly contended that the respondent was engaged till regular selection was made and that regular driver has already been appointed after following selection process. Further in the cross-examination the workman himself had admitted that he was terminated upon completion of the regular selection process of the driver. He also admitted that he had himself participated in the selection process.

5. I find that the Labour Court allowed the reference without sufficiently indicating reasons thereof and without adverting to the important aspects of the matter namely, the appointment of the workman being liable to be terminated upon appointment of a regular driver and his admission that he was terminated upon conclusion of the selection process and that he himself had participated in such selection process.

6. I am unable to accept the contention of the learned advocate Mr. Nanavati that in the cross-examination the workman did not concede that the regular appointment was made. His admission that selection process was over was sufficiently clear. Additionally, he himself had participated in the selection process but had failed to impress the selectors. Considering all these aspects of the matter, I find that the Labour Court erred in allowing the reference. The same is, therefore, set aside. Rule is made absolute with no order as to costs.

(Akil Kureshi, J.)

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